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Current Status of the International Law of the Sea Negotiations

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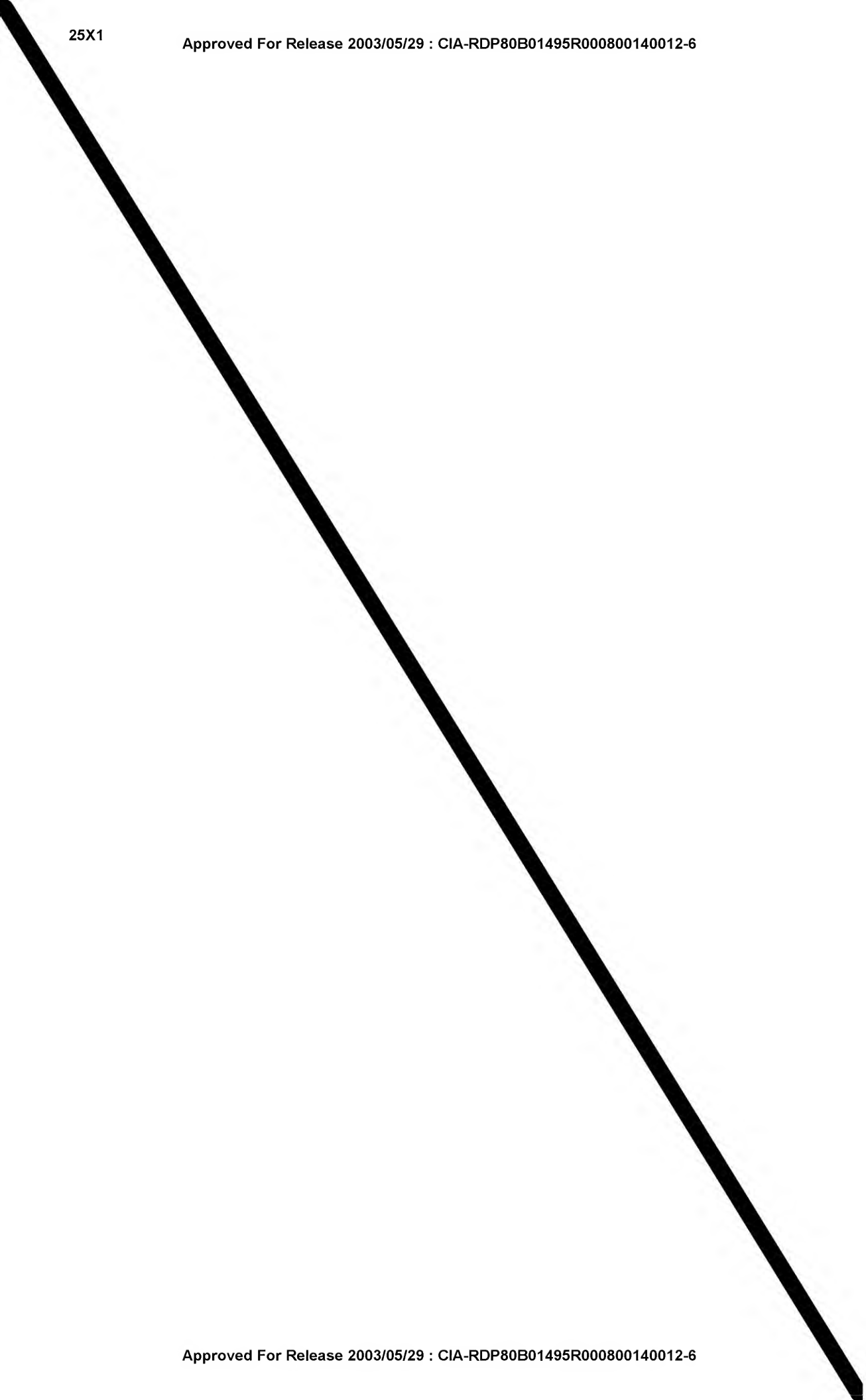

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CURRENT STATUS OF THE INTERNATIONAL LAW OF THE SEA NEGOTIATIONS

Introduction

Despite the absence of formal agreement on any of the inscribed agenda items at the Third UN Law of the Sea (LOS) Conference session held in Caracas June-August 1974, measured progress was made toward the goal of a comprehensive LOS Treaty. For the most part, agreement was reached on formulating the numerous LOS issues and proposals into a manageable set of informal working papers reflecting the main trends on precise issues. The participating nations can now focus on individual issues -- and on the alternative solutions. With few exceptions, these conference papers make it clear what the structure and general content of the LOS Treaty will be. The alternatives, the blanks to be filled in, and even the relative importance attached to different issues are now generally known. Also encouraging was the evident commitment of most of the 138 participating nations to the task of achieving a successful LOS Treaty. The seriousness of purpose was indicated by the low level of polemics and a general tendency to subordinate ideological differences to pragmatic interests.

In the long course of the LOS undertaking -- extending over a period of more than 5 years of preparatory work within the UN system -- traditional regional and political alignments of states have been replaced to a considerable degree by more informal groupings whose membership is based on similarities of interest on a given issue. Each state has different priorities, and agreement on one issue is frequently conditioned on the satisfactory

NOTE -- This working paper was prepared by the Office of Geographic and Cartographic Research of the Central Intelligence Agency. Although the subject matter was discussed with representatives of other offices and agencies, no formal attempt at coordination has been taken. The views presented represent the best judgments of the issuing office, which is aware that the complex and controversial issues discussed lend themselves to other interpretations. For further information about this paper, please call [redacted] 25X1

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resolution of other issues. Given the great number of states involved, this is a complex and time-consuming process, yet it affords considerable opportunity for finding mutually acceptable solutions through various tradeoffs.

Building on the foundation established at Caracas, the search for accommodation is being continued in various inter-sessional bilateral and multilateral discussions leading up to the next formal LOS session to be held in Geneva in March. There seems to be widespread awareness among the world nations that unless the Geneva session succeeds, or comes close to concluding an LOS Treaty, the entire effort could collapse. This would set the stage for a proliferation of unilateral actions that would carry great potential for international friction while probably not satisfying -- to the extent that a comprehensive LOS Treaty would -- the across-the-board maritime interests of individual countries, the United States included.

At the Caracas session, the inclusion in the LOS Treaty of a 12-mile* territorial sea and a 200-mile exclusive economic zone was widely accepted. The two concepts were conditioned on a satisfactory overall treaty package; e.g., U.S. acceptance was and continues to be conditioned on provisions for unimpeded transit of international straits, a balance between coastal state rights and obligations within the economic zone, and a non-discretionary regime for deep seabed mining. In fact, it might be said that the concepts of a 12-mile territorial sea and a 200-mile economic zone constitute the keystone of compromise solutions favored by the majority of states participating in the LOS Conference. Examination of these two issues and other such critical ones as straits transit and the deep seabed regime follow.

Territorial Sea

The overwhelming consensus at the Caracas session for a 12-mile territorial sea virtually eliminated references to any other limit. Even the few proponents of broader territorial seas as wide as

* Distances throughout this working paper are in nautical miles unless specified otherwise.

200 miles -- such as Argentina, Brazil, Ecuador, Peru, Somalia, and Uruguay -- now realize that they must look to coastal state rights within the proposed economic zone to help satisfy their original reasons for claiming extensive territorial waters.

Despite the near consensus on a 12-mile limit, several delegations at Caracas introduced a variety of articles reopening the question of innocent passage in territorial seas. For the most part, these articles parallel the provisions of the 1958 Convention on the Territorial Sea and the Contiguous Zone which hold that passage is innocent "so long as it is not prejudicial to the peace, good order, or security of the coastal state." Although the 1958 territorial sea regime has worked well, such provisions are susceptible to subjective interpretations, especially in today's more politicized world. In this connection, the United States generally subscribes to draft articles submitted by the United Kingdom which elaborate the types of activities that are impermissible, and deal in greater detail with the scope and limitations on coastal state regulatory authority. In any event, the United States is opposed to any requirements of authorization or notification for innocent passage in territorial waters or distinctions between military and commercial vessels.

Straits Transit

The projected expansion of territorial seas to 12 miles has made straits transit a critical issue since more than one hundred international straits between 6 and 24 miles in breadth will be overlapped by the territorial waters of one or more states. Included in this number are many straits crucial to international navigation such as Gibraltar and Malacca. Because of military and commerical considerations, the United States has made acceptance of a 12-mile territorial sea contingent upon a satisfactory provision for ensuring unimpeded transit through and over international straits. The basic U.S. position is that vessels and aircraft in transit through and over international straits should enjoy the same freedom of navigation and overflight,

for the sole purpose of transit, as they do on the high seas. In all other respects, overlapped straits would be territorial waters under the sovereignty of the coastal state.

Some archipelago states such as the Philippines and various coastal states, particularly Spain, have opposed the U.S. concept, taking the position that the doctrine of innocent passage should apply in all territorial waters, including overlapped straits. Under existing international law, innocent passage does not permit overflight or submerged transit, and is susceptible to arbitrary interpretation by coastal states. Although political and ideological considerations are at the seat of opposition by some states (e.g., PRC, Tanzania) to the U.S. straits position, most opposition stems from concerns of strait or archipelago states with respect to security, safety, and pollution. (For example, Malaysia is chiefly concerned about pollution, while Indonesia and the Philippines seem primarily concerned about security factors; by contrast, Spain appears to be seeking concessions on unrelated matters such as NATO and EEC membership and British concessions on Gibraltar).

Before, during, and since the Caracas session, the United States has attempted to accommodate the legitimate concerns of the opposing nations, and has otherwise been active in clarifying its position on straits transit. The result of these efforts has been a discernible trend in the direction of majority support for unimpeded passage. The UK draft articles on straits transit introduced at Caracas have been of help; they provide for unimpeded passage but seek to accommodate coastal state concerns by placing certain obligations on the flag state, such as those regarding pollution, safety, avoidance of threat or use of force contrary to the UN Charter, etc.

Despite the progress made thus far, serious obstacles still remain for the United States. While opposition to submerged transit appears to be subsiding, the aspect of overflight remains difficult, with Ghana and some other states seeking to remove this question from

the LOS context entirely. At Caracas the Persian Gulf States and Spain attempted to draw distinction between transit rights enjoyed by commercial and by military vessels, with the latter being subject to restrictions such as advance notification or consent as contrasted to unimpeded passage for commercial ships. Firm opposition by the United States to such distinctions and awareness on the part of most nations that the United States, the United Kingdom, the Soviet Union, and other major maritime powers will not become party to a treaty without a satisfactory straits regime have helped to maintain momentum toward a consensus for unimpeded passage. With this realization, the attitude among those participants not directly affected has been to watch silently or to use the straits issue as a bargaining lever, while those nations most directly concerned attempt to work out their differences.

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Basically, most nations have at least commercial interests in free transit of straits similar to those of the United States. However, developing nations have been somewhat fearful of dissipating their negotiating strength by dividing among themselves. Thus, they may have been unduly prone to influence by the more hard-line opponents of the U.S. straits position.

The influential Organization of African Unity (OAU) and the Group of 77 are on record as favoring the principle of objective innocent passage. However, such views are not binding on individual member states, and there is considerable diversity of attitudes within the groups. African countries and other developing nations appear increasingly appreciative of the importance of unimpeded transit through international straits. A majority of such countries are anxious to avoid an ideological confrontation that terms such as "innocent passage" and "free, or unimpeded passage" imply. They favor the replacement of such terms with a

more neutral formulation establishing objective criteria on transit rights so as to effectively guarantee freedom of transit while protecting essential security, safety, and environmental interests of the strait states.

In addition to supporting flag state obligations regarding safety, pollution, and threats against coastal state security, the United States is now prepared to show considerable flexibility on certain other aspects of the straits issue. For example, the United States may be willing to except certain straits -- such as those 6 miles wide or narrower and those that do not connect two parts of the high seas -- provided other satisfactory arrangements for such excepted straits can be reached. In general, the United States takes the view that a regime of non-suspendible innocent passage should apply to excepted straits. However, even in the excepted straits, the United States holds that coastal states cannot prescribe or enforce vessel construction standards for pollution control.

With this new flexible approach, present opposition to the U.S. straits position by several nations can be expected to dwindle. For example, Egypt and other Arab states seem principally concerned with the Strait of Tiran. This strait is susceptible to exception by two standards: it does not connect two parts of the high seas; and it is less than 6 miles wide. Exclusion of the Strait of Tiran would reduce Arab opposition to the concept of unimpeded transit, since many Arab nations have a great interest in free transit in other international straits. Recent bilateral discussions with Canada -- a critic of the U.S. position on straits transit -- have greatly narrowed differences between the two countries. The United States has indicated its willingness to support stronger coastal state controls in a vessel-source pollution regime for ice-covered areas (with a military exception) in return for Canadian support for unimpeded transit of straits used for international navigation connecting two parts of the high seas and agreement on no coastal state authority for standard setting for vessel-source pollution in the economic zone or

international straits connecting two parts of the high seas except within ice-covered areas. Although some differences still remain, Canada's straits draft now recognizes the right of overflight and submerged transit in straits more than 6 miles wide and traditionally used for international navigation.

Considerable progress also has been made by the United States on the straits transit issue vis-a-vis archipelago claimant nations which had formed a coalition with Spain and other hard-line straits states and had obtained ideological support from groups such as the OAU. The claims of archipelago states such as Indonesia, Philippines, Fiji, and the Bahamas basically involve the assertion of sovereignty over all waters enclosed by baselines connecting the outermost points of the outermost islands. Such claims involve control over international navigation and overflight -- particularly with respect to warships and military aircraft -- in vast areas heretofore regarded as high seas.

The United States has engaged in extensive private discussions with the archipelago states on such matters as objective definitional requirements for qualifying as an archipelago state and a suitable passage regime within archipelagic waters. The attitude of the United States in these negotiations has been keyed to obtaining the support of the archipelago states for U.S. straits objectives. The U.S. efforts culminated at Caracas with considerable progress achieved toward reaching a mutually acceptable accommodation with the mid-oceanic states of the Bahamas, Fiji, and Indonesia. The mutual agreements are evolving toward a limited, objective definition of an archipelago and provision for unimpeded transit through, over, and under archipelagic waters in designated lanes.

Economic Zone and Continental Shelf

The extent and nature of coastal jurisdiction beyond the territorial sea is for many countries the most significant issue in these negotiations. Many of the other issues are perceived -- at least by the developing coastal states -- in terms of how they affect this coastal jurisdiction. At Caracas

there developed a broad agreement on the concept of a 200-mile economic zone, adjacent to the coastal state, where the coastal state would have exclusive control over seabed mineral resources and the right to manage coastal fisheries. The agreement includes general acceptance of freedom of navigation and overflight in the zone and the right of other states to lay and maintain cables and pipelines. The landlocked and other geographically disadvantaged states, who initially opposed this concept on the grounds that it denied the wealth of the zone to the international area where they would share, apparently have come to generally accept it, seeking instead to gain access to the sea and special rights to exploit resources in their neighbor's coastal economic zone. The Japanese, who see their interests largely as a maritime country and have been adamant in favoring only narrow limits of coastal state control, now accept the inevitability of a broad zonal approach. Recent diplomatic talks with the Japanese indicate they will go to Geneva formally unchanged, but willing to live with a 200-mile economic zone if they can make suitable fishing arrangements. At the other extreme are a few Latin American states like Brazil, Peru, Ecuador, and Panama who continue to press for such complete coastal state control of the zone that in effect it would become a 200-mile territorial sea. Though small, this Latin American group is troublesome because of the disruptive tactics they have pursued at the conference and their influence on the other lesser developed countries (LDCs), particularly the Latins.

Differences still exist as to the exact seaward limit of jurisdiction over the continental margin, as well as the degree of control to be given to the coastal state in the economic zone and the rights to be retained by the international community. Coastal state controls and international community rights highlight to some extent a more fundamental question as to the juridical definition of the economic zone, an entirely new concept in international law. Thus far in the negotiations this question

has received relatively little attention, although a few countries led by Mexico have recently introduced the topic of military installations on the continental shelf into the discussions (possibly to embarrass the United States and gain leverage on other zonal issues). There is still much to be settled in regard to offshore commercial installations and whether they will touch the residual seabed rights issue in the economic zone.

The economic zone negotiating scene is a particularly complicated one because of the number of interest groups, which vary with a country's particular geography, its level of development, and the value of the resources of its zone. Certain thorny questions that will have to be settled if there is to be a final agreement on the economic zone stand out. These include:

1. Do the rights of the coastal states over the seabed and subsoil resources of the continental shelf extend beyond 200 miles where the continental margin lies beyond that limit?

While most states agree that the seaward limit of the economic zone should be 200 miles, there has been a persistent and, to some extent, growing sentiment that coastal state mineral jurisdiction should extend to the edge of the continental margin where it lies beyond 200 miles. This was espoused strongly at Caracas by some 8 to 10 broad-margin countries, including Canada, Australia, the United Kingdom, Argentina, and New Zealand, and has found support from a number of countries in Latin America, Asia, and West Europe. The broad-margin states generally base their claims over the entire margin upon what they consider "acquired" seabed rights under the 1958 Geneva Convention on the Continental Shelf (the so-called "exploitability clause"). Some countries such as Argentina and Australia point out that they have already enacted into national law seabed controls over these coastal areas. Opposing the broad-margin concept have been the African and landlocked and other geographically disadvantaged states who feel that 200 miles should be the outer limit of coastal state jurisdiction. The Africans have been politically tied to an OAU LOS position which was

established in 1973. The landlocked and other disadvantaged states have strongly resisted any further seaward extension of jurisdiction since it encroaches on the proposed international area, where they would share in the mineral wealth under "Common Heritage" principles.

A compromise position that awards to the coastal state control over mineral resources of the margin beyond 200 miles and yet accommodates the interests of the others has been gaining support. In such an arrangement an agreed percent of the revenue from coastal mineral resources in the seabed area between 200 miles and the edge of the margin would be shared with the international community. This proposal seems to interest several African leaders, who indicate they will present it to the OAU before the Geneva session of the LOS Conference. The few landlocked and disadvantaged states that have addressed this compromise have sought to exact a more lucrative arrangement. Singapore, for example, at the informal Evensen group meeting in November 1974, circulated a paper (apparently under consideration by several delegations) providing for revenue sharing seaward of 50 miles.

Most broad-margin states have been slow in accepting any accommodation. Realizing they have insufficient votes to achieve broad-margin jurisdiction without revenue sharing, however, several are now expressing a willingness to consider such an arrangement. A revenue-sharing-within-the-margin arrangement is seen by many U.S. LOS tacticians as a way to gain LDC support for other maritime LOS interests like unimpeded passage through straits and international rights in the economic zone. An important policy question thus arises as to whether the future loss of revenue from hydrocarbons in the U.S. outer continental shelf area beyond 200 miles through revenue sharing with the international community is worth the landlocked, disadvantaged, and African state support for other U.S. LOS interests. Thus far, it is impossible to determine from the reactions of these countries just how much such an arrangement will buy or what it would cost.

2. What are the duties of the coastal states with respect to conservation and full utilization of coastal fish stocks? What are the special problems of the anadromous and highly migratory species proposals?

In coming to grips with one of the most difficult "common pool" resource problems of our time -- the increasing competition for the world's fishery stocks -- the negotiators have reached some important agreements in principle. There is now general agreement that within the concept of the 200-mile economic zone the coastal state should have at least preferential rights to manage the coastal species; in the case of anadromous species (as salmon) the host state should have this same right, extending even beyond the limits of the zone. As for tuna, which migrate for great distances, both in and out of the projected economic zones, there is agreement among many that an international or regional organization should have the management and conservation rights.

Serious questions remain in regard to the disposition of that portion of the coastal species that the coastal state does not harvest, and whether the coastal state will have a duty to conserve the fisheries under its control. The distant-water fishing states, particularly the United States, USSR, and Japan, are pushing for the full utilization of coastal stocks, with specified priorities as to who gets the unutilized portion, and mandatory rules regarding conservation. Japan and the USSR, the leading fishing nations in the world, naturally seek special consideration for their historic fishing, particularly during a transition or phase-out period. Both seemingly have come to accept the inevitability of complete coastal state control; the Soviets are moving now to retain access to important fishing grounds by attempting to form joint-companies, and the Japanese are giving signals that they are willing to work out bilateral treaties with coastal states in most parts of the world if special arrangements can be made along the west coast of North America, where they do most of their fishing.

The coastal developing states initially bargained for unqualified control over coastal fisheries and the right to allocate the unutilized stock to whom they wished. Starting in Caracas, however, they have shown signs of flexibility. Some, like the

west coast Africans, have acknowleged the need for the "full utilization" principle, but with no imposed priorities as to who gets to fish for the unutilized portion. Those that accept priorities tend to draw a distinction between developed and developing countries, with preference to neighboring landlocked nations and developing coastal states that are dependent on their coastal stocks. Others have begun to explore trading off rights to fish with transfer of technology or aid in developing their own fishing industry. Certain states, particularly those with lucrative fishing grounds like Peru, Ecuador, and Mexico, remain adamant, favoring totally exclusive control, with no duties or obligations to submit to international regulations or permit entry by other nations, not only for coastal species, but for salmon and tuna as well.

A middle-ground position has been taken by a number of nations, including the eight European Economic Community countries who believe that fishery organizations should direct fishery usage by region and/or by species.

If the full utilization concept is agreed to, there would remain the question of who has the right or ability to make the technical/biological judgments about fish stocks -- their maximum sustainable yield and sound conservation practices. Many developing coastal states, who have little technical expertise to handle these matters themselves, abhor the thought of developed country specialists making these judgments, and are insisting that they have the right to do it. A proposal that the UN's Food and Agriculture Organization make such biological determinations is now being considered. A number of countries share the United States view that a compulsory dispute settlement mechanism is necessary to make such fishing arrangements work.

The developing coastal states, by and large, have shown little interest in the anadromous species issue and appear willing to accept the U.S. proposal for control by the host state. The

Japanese, however, remain a significant obstacle to settlement. Japan has indicated that it would prefer to work with existing regional fishery conventions among the few countries involved rather than include this question in a global LOS Treaty, which the Japanese fear might result in stricter regulations. Salmon fishing in the North Pacific region is an important and traditional element of Japan's widespread fishing industry, and the issue has both economic and political implications for the Japanese Government. The United States argues that an LOS Treaty provision for host state control of anadromous species throughout their migratory range is essential for future stability as world fishing interests expand, and also to provide a firmer basis for granting Japan access rights subject to reasonable conservation and allocation arrangements. An acceptable agreement between the United States and Japan on a solution of the anadromous problem would most likely provide a basis for a treaty provision acceptable to a majority of nations at the LOS Conference in Geneva.

On highly migratory species the United States has not supported the idea of coastal state control. Because of wide migration patterns of species like tuna, which are sometimes transoceanic, separate regulatory systems in the 200-mile zone and in areas beyond 200 miles could probably not conserve or equitably allocate the stocks. The United States proposed in Caracas that there be international or regional regulatory organizations similar to those that have operated in the Pacific Ocean for many years. Seeking accommodations, particularly with the troublesome west coast Latin Americans, the U.S. proposal calls for regulations by the coastal state in the economic zone and by the flag state outside the zone -- in both cases in accordance with regulations established by appropriate international or regional organizations. Membership in the organization would be mandatory in order to fish, and there would be fees paid to the coastal state for the catch taken within its economic zone. There would also be equitable allocation regulations and requirements by members to adhere to the full utilization principle.

Reception of these draft articles has been mixed. At Caracas a large number of developing country delegates commented favorably on the concept of the U.S. proposal. However, some, with Ecuador and Peru in the forefront, are politically emotional on the issue because of the history of tuna fishing confrontations with the United States. They are strongly opposed to any infringement, no matter how slight, on what they consider to be their sovereignty over a 200-mile patrimonial sea. Mexico, whose greatest concern is enlarging its tuna fleet, has sought to restrict new entrants into the industry in the Pacific Ocean. Japan, who does most of its tuna fishing in the central and south Pacific, appears to support the U.S. approach. Micronesia, on the other hand, wants even stronger coastal state control over tuna than the Latins. A few countries who have no tuna interests per se, but do have strong political/ideological motivations, such as Tanzania, are talking against any form of regional or international control.

3. What are the rights of the coastal state with respect to scientific research and vessel-source pollution?

Freedom of scientific research in the economic zone -- an objective of the developed countries -- is endangered by the coastal state consent regime advocated by most of the LDCs. This regime, part of the LDC attempt to "territorialize" the economic zone beyond the territorial sea, would require the explicit consent of the coastal state before research could be conducted in the zone. Scientific research is not a salient issue for most LDCs, however, and their hard-line position may be for tactical purposes. Also, at least 11 landlocked and other geographically disadvantaged LDCs support advanced notification by the researcher in lieu of prior consent by the coastal state. Although most countries continue to support the explicit consent regime, there is a trend toward a compromise that would avoid a discretionary right of coastal state consent. The most likely compromise appears to be a modified consent

regime that would provide the coastal state the right to prohibit research but would require it to approve research that meets certain conditions specified in the Treaty.

One of the most contentious issues in the economic zone relates to vessel-source pollution. While there is no broad opposition to minimum international standards applicable to vessel discharge, the LDCs and some developed nations, notably Canada and Australia, advocate the right of the coastal state to set higher standards and enforce all vessel-discharge standards in the economic zone. In this they are opposed by the Group of 17 -- maritime nations who fear coastal state interference with navigation. The LDC proposal for a pollution "double standard" -- which would allow less stringent LDC obligations consistent with their national economic policies -- would seem to support the suspicion that the LDCs, like many of the maritime nations, are less concerned about protecting the environment than maintaining the strongest bargaining position in the negotiations. A trend away from coastal state construction and perhaps discharge standards is evident; some LDCs -- including India, a leader of the LDCs on this issue -- have indicated they will not press for the coastal state right to set construction and discharge standards. A softening of the LDC demand for coastal state enforcement of vessel-discharge standards in the economic zone is remote.

Deep Seabed

The deep seabed issue is central to the LOS debate. It gave birth to the LOS Conference and is an issue around which the LDCs, the largest group of nations, rally and unite. The LDCs view control of mining the manganese nodules found on the deep seabed as an opportunity to control what they see as unbridled exploitation by the developed nations and to narrow the ever widening gap between the haves and the have nots. They have taken "Common Heritage" as their battle cry and have resolved that what is common heritage must be under strong, effective, common sovereignty, and not a matter for unilateral, national or private activities.

Caracas provided a forum for the major protagonists to present their basic views: on one side the United States, the USSR, the Common Market countries (minus Ireland), and Japan called for minimum International Seabed Resource Authority (ISRA) control of seabed mining and a large measure of freedom for individual state and private enterprises; on the other side the Group of 77 (LDCs), plus several other countries (Romania, Albania, and Spain) that for various reasons support the Group of 77 on this issue, called for maximum ISRA control. Additionally, the LDC land-based producers seek ISRA-managed price and production controls on seabed minerals to minimize what they consider to be the potentially adverse effects of ocean mining on their economies.

A key U.S. objective is to assure access to seabed minerals for the U.S. by framing an acceptable system for deep seabed exploitation in the convention. Balanced decision-making procedures within the Authority are considered essential to protect the interests of industrialized and consumer nations against adverse decisions on important substantive issues. The LDCs in Caracas effectively resisted any attempts to work out the details of how the exploitation system would operate until the industrialized countries concede that the ISRA will be empowered to engage in direct exploitation.

There was insufficient diplomatic and political will in Caracas to make the hard negotiating decisions that were required to bridge the gap between the opposing positions. Various factors were responsible for the hesitancy to negotiate and the consequent lack of discernible progress. Many nations felt little sense of urgency about these negotiations and apparently would have been willing to allow them to be protracted indefinitely. Six or seven LDC land-based producers stressed the potential problem for their economies posed by deep-sea mining, while [redacted] LDC leaders Peru and Algeria played upon this and other topics to obstruct serious discussions. A more significant impediment might have been the lack of self-confidence on the part of the LDCs to discuss such precise economic

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issues as the type of payments for mining rights, national tax credits to operators for payments for mining rights, depreciation write-offs for deep seabed mining equipment, and other realities of capital investment.

The LDC delegates generally have had no experience in large-scale private financial endeavors and many have ideological problems in adjusting their theories to capitalist practice just as the United States has difficulty understanding their economic philosophies. Existing taxation and management practices for land production of hard minerals offer little guidance to the LDCs on what measures would be appropriate for the ISRA's contractual arrangements with corporations. They feel that any precipitious agreement on the conditions of exploitation might lead to an arrangement whereby the ISRA would not possess "direct and effective control" over the activities of contracting parties. Additionally, they probably fear being locked into a treaty calling for some manner of royalty or taxation schedule that would provide the ISRA with only a small share of the benefits.

The U.S. proposal at Caracas was more palatable for the LDCs than was the Common Market (EEC) proposal. The U.S. proposal called for legal arrangements between the ISRA and the contractor -- licensing, perhaps, or even service contracts -- whereas the EEC proposal did not. The U.S. proposal also called for contractor compliance with rules promulgated by the ISRA as well as those set out in a treaty; the EEC proposal mentioned compliance only with the latter -- an implication that the United States would favor greater ISRA participation in the seabed's exploitation than would the Europeans. A Japanese proposal indicated a preference for the ISRA as a regulatory body, exercising control over contractors within the framework of rules written into a LOS treaty. The proposal would allow direct ISRA exploitation, but only to the degree that the ISRA's own funds and technology would permit.

A third group at Caracas, primarily Australia, Canada, Denmark, Norway, and Sweden, advocated a parallel system that would allow both licensing of firms or states and direct exploitation by the ISRA.

U.S. negotiators at Caracas detected a growing awareness, or perhaps admission, on the part of the LDCs that the only capability for seabed mining at the present time lay in the hands of U.S., European, and Japanese private enterprises, and that if the LDCs are to exert any sort of control over seabed exploitation they will have to make an association with the ISRA attractive for private investors. The LDCs probably have not yet decided what measures to take in this regard. A definitive adjustment of the LDC position on the deep seabed issue may be forthcoming at a Group of 77 meeting scheduled to be held immediately prior to the March resumption of the LOS Conference at Geneva. The Group of 77 might accept a parallel system of exploitation. Its own proposal in the First Committee's draft articles already allows for participation by natural and juridical persons in association with the ISRA through "...contracts, joint ventures, or any other such form of association...," and some of its own members, Fiji and Sri Lanka among them, are on record as opposing direct exploitation by the ISRA.

The Group of Five (France, Japan, USSR, United Kingdom, United States) is not a totally cohesive unit. The United States is alone on the quota issue, proposing no limit on the number of mine sites allowed any single state or entity. The others favor some manner of quota arrangement to prevent American entrepreneurs from monopolizing the prime mining sites. There are indicators that other members of the group now support a parallel licensing/direct exploitation system of mining as a fallback option. Indications of French, British, and Japanese flexibility on the question of Council voting arrangements could further lessen the bloc strength of the Group of Five. These nations may be content with a satisfactory resolution of the basic issue of access to the seabed and may not actively pursue machinery questions in Geneva.